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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,660	11/10/2003	Terry L. Bowersock	28341/6127NDIVI	6143
4743	7590	04/27/2006		EXAMINER
MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606			KIM, YUNSOO	
			ART UNIT	PAPER NUMBER
			1644	

DATE MAILED: 04/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/705,660	BOWERSOCK ET AL.	
	Examiner	Art Unit	
	Yunsoo Kim	1644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 February 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-34 and 43-78 is/are pending in the application.
- 4a) Of the above claim(s) 6-10,31-34,50-53,74,75 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5,11-30,43-49,54-73 and 76-78 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 6/13/05.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

1. Applicant's remarks filed 2/21/06 have been entered.

2. Claims 29, 39, 44, 72 and 73 have been amended.
Claims 1, 3-7, 9, 10, 12 and 13 are under consideration.
Claims 6-10, 31-34, 50-53, 74 and 75 remain withdrawn.
Claims 1-5, 11-30, 43-49, 54-73 and 76-78 are under consideration in the instant application.

3. Applicants' IDS filed 6/13/05 has been acknowledged. However, the international search reports on IDS filed on 6/13/05 have been considered but crossed out as they are not appropriate for IDS.

4. In view of applicant's amendment to the claims, the rejection set forth under the second paragraph of 35 U.S.C. 112 (sections 5 and 6) in the office action mailed 11/8/05 has been withdrawn.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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6. Claims 1-5, 14-28, 43-49, 57-71, 77 and 78 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,674,495 (IDS reference, of record) in view of Jackson Thesis (IDS reference, 1995, of record) and U.S.Pat. 4,792,452 (of record) for the reasons set forth in the office action mailed 11/8/05.

Applicants' arguments filed on 2/21/06 have been fully considered but they are not persuasive.

Applicants traversed the rejection based on that the references do not teach all the limitations (e.g. cross linking alginate with at least two cations).

The claimed invention is drawn to a method of vaccinating a vertebrate species by **administering a composition** comprising a water-in-oil emulsion made by steps (A-C in claim 1). The claimed invention is NOT a method of preparing a vaccine composition as in the parent divisional patent U.S. Pat. 6,656,470 claims 1-35. The claimed composition in claim 1 (A)(a-e) is met by the combination of teachings of record and thus patentability of the product does not depend on its method of production. The claimed invention is not a method of making the vaccine but administering a composition.

Therefore, the combination of the references remains obvious.

From the teachings of references, it would have been obvious to one of the ordinary skill in art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of the ordinary skill in the art at the time of invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

7. Claims 1, 2, 4, 11-19, 21-30, 43, 44, 54-62, 64, 71-73, 76 and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,674,495 (IDS reference, of record) in view of Jackson Thesis (IDS reference, 1995, of record) and U.S.Pat. 5,019,100 (of record) for the reasons set forth in the office action mailed 11/8/05.

Applicants' arguments filed on 2/21/06 have been fully considered but they are not persuasive.

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Applicants traversed the rejection based on that the references do not teach all the limitations (e.g. cross linking alginate with at least two cations).

In light of the discussion provided above, the combination of references remains obvious.

From the teachings of references, it would have been obvious to one of the ordinary skill in art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of the ordinary skill in the art at the time of invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

8. No claims are allowable.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yunsoo Kim whose telephone number is 571-272-3176. The examiner can normally be reached on Monday thru Friday 8:30 - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 571-272-0841. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Yunsoo Kim

Patent Examiner

Technology Center 1600

April 20, 2006



Patrick J. Nolan, Ph.D.

Primary Examiner

Technology Center 1600